

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

NATIONAL WILDLIFE REFUGE ASSOCIATION,)	
DRIFTLESS AREA LAND CONSERVANCY, WISCONSIN)	
WILDLIFE FEDERATION, and DEFENDERS OF WILDLIFE,)	
Plaintiffs,)	
v.)	
)	
RURAL UTILITIES SERVICE, et al., Defendants,)	
)	Nos. 21-cv-00096-wmc &
AMERICAN TRANSMISSION COMPANY, LLC,)	21-cv-00306-wmc,
DAIRYLAND POWER COOPERATIVE, & ITC)	
MIDWEST LLC, Intervenor-Defendants.)	Consolidated

**PLAINTIFFS NATIONAL WILDLIFE REFUGE ASSOCIATION, DRIFTLESS
AREA LAND CONSERVANCY, WISCONSIN WILDLIFE FEDERATION, AND
DEFENDERS OF WILDLIFE’S OPPOSITION TO INTERVENOR-DEFENDANTS’
MOTION FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFFS’
EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL**

In normal course, Plaintiffs would not object to an extension as a matter of professional courtesy. In the present circumstances, however, the Intervenor-Defendant Transmission Companies’ motion, Dkt. 221, for an additional extension until June 10, 2022 to respond to the Plaintiffs’ emergency injunction motion is unwarranted, prejudicial to Plaintiffs’ interests, and should be denied.

For the reasons explained below, the Intervenor-Defendants’ response to the injunction motion would otherwise have been due before the U.S. Court of Appeals for the Seventh Circuit on May 31, 2022. The Transmission Companies are seeking to further delay before this District Court while, at the same time, continuing to aggressively bulldoze ahead with construction, including clearcutting and installing 17-story high transmission towers and other equipment. The Transmission Companies are intentionally creating exactly the “orchestrated trainwreck,” Dkt.

175 at 16, which the District Court warned against, while they appeal: (1) this Court’s January 14, 2022 Opinion and Order, Dkt. 175, granting summary judgment largely in favor of Plaintiff Conservation Groups, and (2) this Court’s March 1, 2022 Final Judgment Order vacating and remanding the Environmental Impact Statement and Record of Decision, and declaring that the proposed Cardinal-Hickory Creek transmission line is prohibited from crossing the protected Upper Mississippi River National Wildlife and Fish Refuge, Dkt. 195.

Following the District Court’s January 14, 2022 Opinion and Order and request for supplemental briefs on remedies, Dkt. 175, Plaintiffs filed a timely brief specifically requesting injunctive relief. Dkt. 178. The District Court entered declaratory and other relief in its Final Judgment, Dkt. 195, but declined to issue the Plaintiffs’ requested injunction at that time. In a subsequent text order, this Court denied the Transmission Companies’ requested stay. Dkt. 201.

The Transmission Companies appealed: (1) the District Court’s Opinion and Final Judgment to the Seventh Circuit, and (2) the District Court’s denial of a stay pending appeal. On May 6, the Seventh Circuit denied the Transmission Companies’ stay motion stating as follows:

IT IS FURTHER ORDERED that the appellants’ motion to stay the district court’s judgment is **DENIED**. In light of the briefing schedule set on May 5, 2022, the court will attempt to schedule this appeal for argument in September. No extensions of time will be granted absent extraordinary circumstances.

Dkt. 215-1.

The Seventh Circuit’s denial of the stay motion indicates that the Court of Appeals was not persuaded by the merits of the Transmission Companies’ arguments on appeal, their claims of irreparable harm, their arguments about the public interest, or by all three together on the “sliding scale.” *In re A & F Enterprises, Inc.*, 742 F.3d 763, 766 (7th Cir. 2014). The Seventh Circuit set a consolidated briefing schedule ending on August 29, 2022, Dkt. 215-5, and stated

that the “court will attempt to schedule this appeal for argument in September. No extensions of time will be granted absent extraordinary circumstances.” Dkt. 215-1.

Despite the orders from this District Court and the Seventh Circuit, however, the Transmission Companies are nonetheless plowing full-speed ahead in bulldozing, clearcutting, and construction through the Southwest Wisconsin Driftless Area’s scenic landscape, small town communities, family farms, waterways and other vital natural resources along the proposed route leading to the protected Upper Mississippi River National Wildlife and Fish Refuge, which they cannot legally cross. They are charging hundreds of millions of dollars to utility ratepayers and causing unnecessary property damage and environmental harms. The Transmission Companies are intentionally running through the warning flags raised by this District Court in its Opinion and Order. Dkt. 175 at 13, 16. The Transmission Companies are engaging in exactly the “orchestrated trainwreck” that this Court warned them against in its January 14, 2022 Opinion and Order granting summary judgment in Plaintiffs’ favor. *Id.* at 16.

On May 5, the Seventh Circuit also entered a jurisdictional order (Case No. 22-1709, Dkt. 12), which essentially allowed the Plaintiffs to seek injunctive relief, which Plaintiffs did on May 18, 2022.

The Intervenor-Defendants’ response brief was then due before the Seventh Circuit on May 31, and they did not request or receive any extension.

On May 25, 2022, the Seventh Circuit issued an Order denying Plaintiffs’ “motion for injunctive relief without prejudice to renewal after presentation to the district court.” Dkt. 211. Plaintiffs promptly filed their Emergency Motion for an Injunction before this District Court two days later on May 27, 2022. That Emergency Motion and supporting Memorandum are essentially the same as filed before the Seventh Circuit on May 20 to which the Intervenor-

Defendants' response brief would otherwise have been due to be filed on May 31. Any "technical experts" alleged by the Transmission Companies as necessary, Dkt. 221 at 3, would otherwise have been required to provide their views by May 31, 2022.

This Court set the due date for the Intervenor-Defendants Transmission Companies to file their response brief on June 6, 2022, which thereby provided them with *an additional six days* beyond May 31.

For all practical purposes, the Intervenor-Defendant Transmission Companies have had the Conservation Groups' motion for an injunction since it was filed with the Seventh Circuit on May 18. The Defendants' response before the Seventh Circuit would have otherwise been due on May 31. In effect, the Seventh Circuit's Order sending this injunction motion to the District Court for presentment, and the District Court's response due date provided the Defendants with an extension of six additional days until June 6.

In these circumstances of an emergency motion for an injunction, Plaintiffs object to the request for an additional extension to file their response brief, which would allow more destructive construction, more bulldozing of lands and waterways, and more installation of transmission towers and other equipment, which would illegally and improperly create environmental harms and property damage, and would continue to run up the meter on costs charged to utility ratepayers.

For the foregoing reasons, the Plaintiff Conservation Groups request that this Court deny the Intervenor-Defendants' motion for an additional extension of time and prevent the Transmission Companies' perverse game of chicken with the Courts and the public from being successful.

Respectfully submitted this 31st day of May, 2022,

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Western District of Wisconsin by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

DATED: May 31, 2022

SIGNED: /s/ Howard A. Learner
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